IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2585 OF 2004

Shri Parshuram Bama Mhatre
Residing at Kumbhar Khandpada,
Subhash Road, Dombivali (W),
Dist. Thane. ... Petitioner

V/s

1 Shri S. Chakravarty,
Commissioner of Police, Thane.

2 The State of Maharashtra.

3 The Superintendent,
Nasik Road Central Prison. ... Respondents

Mr. U. N. Tripathi for the petitioner.

Mr. D.S. Mhaispurkar, A. P. P. for the respondents.

CORAM: R.M.S. KHANDEPARKAR &

P.V. KAKADE, JJ.

DATED: 15TH MARCH, 2005

ORAL JUDGMENT (Per Khandeparkar, J.)

1 Heard. Perused the records.

2 The petitioner challenges the order dated 8.10.2004 passed against the

son of the petitioner. The name of the detenu is Shanidas Parshuram Mhatre. The order was served upon him on 9.10.2004. The detenu preferred the representation against the said order on 16.11.2004 which came to be rejected on 24.11.2004. The order of detention has been passed on the basis of C.R. No. 77 of 2004 in relation to the offences punishable under Sections 384 and 387 of the I.P.C. in relation to the incident dated 4.6.2004 and three in-camera statements of the witnesses. The detenu was arrested in relation to the said incident but was bailed out on 9.6.2004 on execution of a personal bond for Rs.15,000/- with one surety in the like amount. The in-camera statements of two witnesses were recorded on 6.9.2004 and of the third witness on 10.9.2004.

3 The impugned order is challenged on various grounds, however, it is not necessary to consider all those grounds and suffice to refer to only two grounds, one relating to the untruthful translation of the grounds in support of the impugned order and the other in relation to failure on the part of the respondents to furnish correct translation of the grounds of detention inspite of specific request for the same by the detenu.

4 It is not in dispute that the detenu does not know English and he is Maharashtrian person born and brought up in Maharashtra and his mother tongue is Marathi and he has also studied in Marathi language. It is also a matter of record that the detenu was served with Marathi translation of the grounds in support of the detention order.

5 While assailing the impugned order on the first ground of challenge, the learned advocate for the petitioner submitted that it was the obligation of the detaining authority to furnish the detenu with correct and true translation in Marathi of the grounds in support of detention in order to enable him to exercise effectively his fundamental right of making representation assured under Art. 22(5) of the Constitution. It is his further contention that, while grounds in English alleged that the impugned order was passed from the point of view of preventing the detenu from indulging in the activities which can lead to public order, the Marathi translation of the grounds in support of the impugned order refers to totally different reason for the detention of the detenu. Drawing our attention to the Marathi translation of the grounds of detention, the learned advocate for the petitioner has submitted that, if one reads the said translation in Marathi, it can immediately be known that the ground for detention of detenu disclosed therein is to avoid the opportunity to the detenu to indulge in the activities which can lead to problems relating to public law and order and not to the public order as such. The concept of "public order" and "law and order" are totally different. According to the learned advocate for the petitioner the detenu was totally misled in the matter and had no proper opportunity to make effective representation against the detention order and thereby there was clear violation of his right

guaranteed to him under Art. 22(5) of the Constitution. Reliance is sought

to be placed in the decisions of the Division Benches in the matter of **Smt. Nazma Moiddin Shaikh v/s R.H. Mendonca & ors., reported in 2001 Cr.L.J. 860** and two unreported decisions in the matter of **Sayyed Hussain Ali Ashiq Ali v/s R.H. Mendonca & ors., in Cri. W.P. No. 1130 of 1999 and Smt. Bindu Pandey v/s S.C. Malhotra & ors. in Cr.W.P. No. 620 of 1997 delivered on 13.1.2000 and 7.11.1997 respectively.** The learned A.P.P. on the other hand, referring to the affidavit in reply filed by the detaining authority has submitted that the detenu was furnished with the correct translation of the grounds in support of the detention order and he was clearly informed that he was indulging in activities which are prejudicial to the maintenance of the public order and further that he had in fact exercised his right to make the representation which clearly discloses that he was in no way prejudiced by the translation of grounds in support of detention order furnished to him.

6 Undoubtedly, the impugned order was issued with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order. The grounds in support of the detention order also clearly disclose that the detaining authority had arrived at the conclusion that the detenu had been habitually involving in criminal activities which had adversely affected the maintenance of the public order and observation in that regard by the detaining authority in paragraphs 4 and 5 of the grounds

in support of detention order clearly read thus -

In para 4, it was observed that -

> ".....You are engaged and habitually involved in criminal activities which adversely affect and also likely to affect adversely the maintenance of public order and as such you are a dangerous person as defined in Section 2(b-1)..... I am further satisfied that you will again indulge in similar activities of serious nature, disturbing the maintenance of public order and, therefore, there is absolute necessity to detain....".

Further observation in para 5 thereof reads thus -

> "I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order."

7 The above observations in the grounds in support of the detention order have been translated in Marathi which was furnished to the detenu alongwith the detention order. The translation in relation to the expression "public order" in para 4 reads thus, 'सार्वजनिक कायदा आणि सुव्यवस्था'. The translation in relation to the said expression in para 5 also reads thus, 'सार्वजनिक कायदा आणि सुव्यवस्था'. Apparently, the expression "public order" which is found in English version of the grounds in

support of the detention order has been translated in Marathi as

'सार्वजनिक कायदा आणि सुव्यवस्था', which obviously means "public law and order" and not merely "public order". In relation to the expression "public order", the Apex Court in the matter of **Commissioner of Police & ors. v/s Smt. C. Anita, reported in 2004 A.I.R. SCW 4750,** has clearly observed that it is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It was also observed that the public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. It was further observed that when two drunkards quarrel and fight, there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Public disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. It was also held that, the two concepts have well defined contours, it being well established that stray and unorganized crimes of the theft and assault are not matters of public order since they do not tend to affect the even flow of

public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and

order represents the largest scale within which is the next circle representing public order and the smallest represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" apprehends disorders of less gravity than those affecting "security of State".

8 The distinction between two concepts being well settled and considering the law relating to the representation assured to the detenu under Art. 22(5) of the Constitution, the petitioner is justified in contending that he

was entitled to have true and correct translation of grounds in support of the detention order. As already seen above, the expression "public order" was sought to be translated as "public law and order". It is also undisputed fact that the order of detention itself discloses that the same was issued to prevent the detenu from indulging in the activities detrimental to the public order and even in the Marathi translation of the said order it was not referred to as 'सार्वजनिक कायदा आणि सुव्यवस्था', but it was referred to as 'सार्वजनिक सुव्यवस्था'. One fails to understand as to how the concept of 'सार्वजनिक कायदा आणि सुव्यवस्था' can be equated to the concept of 'सार्वजनिक

सुव्यवस्था'. The interpolation of the expression "law" in the translation in relation to the "public order" in Marathi thereby indicating it to be "public law and order" and not "public order" as contended by the detenu, bound to mislead him, as the translation does not disclose the true meaning of the

expression "public order" in Marathi. Failure on the part of the detaining authority to convey the correct meaning of the reason for which the detenu was sought to be detained, clearly amounts to denial of right to the detenu which is assured to him under Art. 22(5) of the Constitution. Incorrect translation has certainly misled the detenu and which has ultimately affected his right to make effective representation against such order of detention.

9 The Division Bench of this Court in **Nazma Moiddin Shaikh**' s case

had occasion to refer to a similar such case wherein while translating the expression "public order" in Hindi it was sought to be communicated to the detenu to be 'कानून और सुव्यवस्था' and referring to the same, it was observed that the communication in Hindi in relation to the expression "public order" in English was totally incorrect as what was communicated in Hindi was to the effect that the detenu was detained on account of his activities leading to a law and order problem and not on account of the breach of public order. Similarly, in the case of **Bindu Pandev**' s case, expression "public order" was sought to be translated as 'सार्वजनिक शांति' as well as 'सार्वजनिक हित'.

In **Sayyed Hussain Ali**'s case, the expression “public order” was sought to be conveyed in the translation as being prejudicial to the law and order. It was clearly held in all these decisions that such a incorrect translation in relation to the basic ground on which the detenu was sought to be detained had clearly affected the detenu's right to make the representation assured to him under

Art. 22(5) of the Constitution and, therefore, the continued detention was held to be bad in law.

10 The contention of the detaining authority that the detenu was given correct translation in relation to the grounds of detention, therefore, cannot be accepted. We have also perused the Marathi encyclopedia “शब्दकोश” edited by D.H. Agnihotri, M.A. Ph.D. published by Venus Publication House, Pune, wherein the use of various Marathi words like ‘सार्वजनिक कायदा’ and ‘सुव्यवस्था’, have been explained and considering the same the contention that the observation of the detaining authority that the detenu was furnished with the correct translation of the expression “public order” cannot be accepted. The expression “public law and order” is not the same to “public order”. Mere use of the word “public” would not make the two concepts to be the same as there is inherent difference between the expression “law and order” and the “public order”. While the former would relate to the individual problems, the latter relates to the disorder in the

society or community or locality as such. Mere pre-fixation of the word "public" to the concept of "law and order" cannot transform the same into "public order". The basic ingredients of two concepts being different and the right to representation being assured as a fundamental right to the detenu, it was necessary for the detaining authority to make the correct translation of the grounds in support of the detention to the detenu so as to enable him to exercise such fundamental right effectively and meaningfully. The infraction

on the part of the detaining authority in that regard cannot be ignored. What is surprising is, in spite of there being catena of decisions of the Apex Court as well as of this Court on the aspect of difference between the public order and law and order, the detaining authority did not take appropriate measures to furnish the correct translation to the detenu. It is pertinent to note that while furnishing the translation of the main order of detention, the expression "public order" was correctly translated in Marathi as 'सार्वजनिक सुव्यवस्था' but while furnishing the Marathi version of the grounds in support of detention, the same expression "public order" was sought to be translated as 'सार्वजनिक कायदा आणि सुव्यवस्था'. There is absolutely no justification for such mistake on the part of the detaining authority. Though such an act would justify adverse observations and comments, we would refrain from making any such observations with expectation that the respondents Government authorities would themselves take up the matter and take

appropriate action not only to avoid such mistakes in future but to take necessary action against the persons who have failed to perform their duties in respect of the translation of the grounds in respect of the order in question.

11 The second ground of challenge relates to failure on the part of the authorities to furnish the correct translation of the grounds of detention even though asked for. Drawing attention to the representation dated 16.11.2004 by the detenu, the learned advocate for the petitioner submitted that the respondents were requested to furnish a true and correct translation of the

grounds of detention to enable the detenu to make the effective representation. However, while rejecting the representation, the detenu was informed that, for the purpose of true and correct translation of the grounds of detention, he may contact the detaining authority i.e. the Commissioner of Police, Thane. The same was communicated to the detenu through his advocate on 24.11.2004. The ground in relation to failure on the part of the authorities to furnish the true translation was specifically enumerated as ground (C) in the petition. While replying to the said ground the respondents have not furnished any explanation as to what prevented the respondents from furnishing the correct translation to the detenu on being asked for. Once it was apparent that the order of detention which was passed on account of the prejudicial activities of the detenu for “public order” was required to be

translated as 'सार्वजनिक सुव्यवस्था' in Marathi, and while the ground in support of the said order in English clearly disclosed the expression "public order", the Marathi translation in relation to ground of detention disclosed the said expression as being translated as 'सार्वजनिक कायदा आणि सुव्यवस्था' , the difference in expression being apparent on the face of the record, it was but necessary for the respondents either to explain as to how two concepts are one and the same or at least to furnish the correct translation to the detenu and if not, the reason for non-furnishing of such translation to the detenu. But it was not permissible for the authorities to direct the detenu to contact the detaining authority i.e. The Commissioner of Police, Thane. It is

more so, as rightly submitted by the learned advocate for the petitioner that, in view of the decision of the Division Bench of this Court in the matter of **Aslam Amin Shaikh v/s M.N. Singh & ors., in Criminal Writ Petition No. 155 of 2003,** delivered on 20.9.2003 read with the decision of the Apex Court in the matter of **Mrs. Nafisa Khalifa Ghanem v/s Union of India & ors., reported in (1982) 1 SCC 422.** The Apex Court, in Nafisa's case had condemned the dilatory procedure adopted by the detaining authority in supplying the documents as the same had affected the right of the detenu in making effective representation. Relying upon the decision of Nafisa's case and dealing with the issue in relation to the failure on the part of the authorities to furnish copies of the documents asked for by the detenu, the Division Bench

had held

that, “Once it is held that after approval, the State Government has to deal with the representation of detenu and the report and the supporting documents furnished to the State Government by the Commissioner of Police, the State Government had to attend to the request made by the petitioner for supply of documents. It cannot direct the detenu to approach the Commissioner of Police. This indeed is a dilatory procedure which would obviously affect the right of the petitioner to make an effective representation. If at all, the State Government wants any assistance from the Commissioner of Police, it can seek. But the request must be attended to immediately. The detenu cannot be asked to adopt a cumbersome procedure to approach the Commissioner of Police”. Apart from its binding nature, we are also in

respectful agreement with the said decision of the Division Bench. Considering the same and on account of failure on the part of the authorities to furnish the correct translation inspite of specific request in that regard by the detenu, the continued detention of the petitioner is in clear violation of his right under Art. 22 (5) of the Constitution and, therefore, bad in law.

12 It is surprising that, inspite of the order passed in Cri. W.P. No. 155 of 2003 which was delivered on 20.9.2003, the respondents continued to act in contravention of the said law laid down by this Court. Undisputedly, the

request for true translation was made by the detenu under representation dated 16.11.2004 and that was rejected on 24.11.2004 and in the same letter the detenu was asked to contact the Commissioner of Police of Thane, for the true translation. Obviously, since this Court in Aslam Amin Shaikh's case in Cri. W. P. No. 155 of 2003 as long back as in 2003 had made very clear that such a procedure cannot be adopted by the respondents once a demand is made by the detenu in relation to any copy or translation, it was necessary for the respondents to furnish such copy to the detenu or to explain how the translation which was already supplied was a correct and true translation; the respondents having done nothing in that regard and continued to be adamant in spite of the said order of this Court. In fact the officer and employees of the

Government who have acted in this manner, warrant necessary action for such indisciplined acts on their part. In this regard also, the respondent Government authorities are not only expected but are required to take

necessary action against the guilty officers or employee or employees, as expeditiously as possible and further ensure that such violations are not repeated.

13 For the reasons stated above, therefore, the petition succeeds. The continued detention of the petitioner is held to be illegal and the detenu is

directed to be released forthwith unless required in some other matter. Rule is made absolute in above terms with no order as to costs.

(R. M. S. Khandeparkar, J.)

(P. V. Kakade, J.)